TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912. 1914

No. 891. 79

G. W. WATHEN, APPELLANT,

vs.

JACKSON OIL & REFINING COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED DECEMBER 20, 1912.

(23,466)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 30, 1912.

1 *Caption of Minutes.*

Be it remembered that a regular term of the United States District Court for the Southern District of Mississippi, Jackson Division, was begun and held at the court-room thereof, in the City of Jackson, on the first Monday in November A. D. 1912, being the time and place for holding said court appointed by law.

There were present: Honorable Henry C. Niles, Judge; R. C. Lee, United States Attorney; William Bruce Banks, Assistant United States Attorney; W. O. Ligon, Marshal; L. B. Moseley, Clerk.

2 *Original Bill.*

In the District Court of the United States for the Jackson Division of the Southern District of Mississippi. In Equity.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

To Said Court, or to the Judges Thereof, Sitting in Equity:

Your orator, G. W. Wathen, a resident and citizen of the State of New York and a non-resident of the State of Mississippi, most humbly complaining of the Jackson Oil & Refining Company, a corporation duly chartered, organized and existing under and by virtue of the laws of the State of New Jersey, and having its residence and legal domicile therein, and having a mill for the manufacture of cotton seed into its products in the city of Jackson, Hinds County, Mississippi; of W. B. Gowdey, a resident and citizen of the City of Jackson, County of Hinds, Mississippi, and *on* the Hon. Ross A. Collins, Attorney General of the State of Mississippi, a resident and citizen of the City of Jackson, County of Hinds, State of Mississippi; of Hon. Frank Johnston, first Assistant Attorney General, a resident and citizen of the City of Jackson, County of Hinds, State of Mississippi; of Hon. George Ethridge, second Assistant Attorney General, a resident and citizen of the City of Meridian, County of Lauderdale, State of Mississippi; of Hon. J. H. Howie, District Attorney of the Seventh Circuit Court District of the State of Mississippi; of Hon. O. B. Taylor, County Prosecuting Attorney, a resident and citizen
3 of the City of Jackson, County of Hinds, State of Mississippi, and for his cause of action would respectfully represent unto your Honor:—

I.

That the controversy herein is wholly between citizens and residents of different states, and that your orator claims a right given

under Article 1, Section 10, of the Constitution of the United States, whereunder it is provided: "No state shall pass * * * any bill of attain-er * * * or law impairing the obligation of contract," and under the Fourteenth Amendment thereto, whereby it is provided,—"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws," and that the amount in controversy, exclusive of interest and costs exceeds the sum or value of Five Thousand ($5,000.00) Dollars, and by reason thereof, jurisdiction is vested in this Honorable Court.

II.

Your orator avers that the Jackson Oil & Refining Company is a corporation duly chartered, organized and existing, as aforesaid, and that its sole business consists in the operation in the City of Jackson, Mississippi, of a cotton seed oil mill, the value of which *os* One Hundred Thousand ($100,000.00) Dollars, and that said corporation has issued its stock, and your orator holds and owns in his own right five hundred and two (502) shares thereof, of the par value of One Hundred ($100.00) Dollars per share, and of the actual value of, to-wit, Sixty Thousand ($60,000.00) Dollars, and that said
4 corporation is duly authorized and empowered to carry on its said business in said State of Mississippi, and that it has been so engaged for the past four years and buys cotton seed upon the markets and separates said seed unto their constituent elements of cotton seed oil, cotton seed meal, cotton seed hulls, and therein it employs its expensive plant hereinbefore described, which is wholly valueless for any other or different purpose, and which, if not operated as hereinafter set forth will become and be wholly valueless, and the property of your orator will thereby be totally destroyed.

III.

Your orator avers that at present the Jackson Oil & Refining Company empl-ys two shifts of laborers in the operation of its said mill, who are on duty for a period of twelve hours each day, but who have, at least, one hour off during that time in which they can do what they see fit and in which to eat their meals.

Your orator avers that in the operation of said mill it must be kept at work continuously, both day and night, and that in its said business said Jackson Oil & Refining Company has in its employ many laborers who, as well as their predecessors, have without any detriment whatever to their health, or to their physical, mental and moral well-being, worked as they would now like to work, but who are prevented by said unconstitutional act hereinafter set forth. That all of said employés are adults, capable of contracting to and with said Jackson Oil & Refining Company, and they and each of them have only their labor to sell, whereby to support themselves, and that many of them are common unskilled laborers, who are called
5 upon to use their brawn for earning their livelihood, and that they are substantially the same kind and class of laborers as

are used upon work other than manufacturing or repairing, that is, the construction of railroads, water works, building of houses, and as are employed as tenantry upon the farm and in the forest.

That individuals and corporations not engaged in manufacturing or repairing can work their employés in identically the same classes of work as those done by the Jackson Oil & Refining Company, and that such non-manufacturing or repairing individuals or corporations can work their employés for an unlimited number of hours in the same class of clerical work and in unloading and loading cotton seed; in the purchase of cotton seed; in the sale of cotton seed oil; in the handling of cotton seed oil; cotton seed cakes; in the operation of engines by engineers, and in the firing of boilers by firemen, and in doing every other class of work done by the Jackson Oil & Refining Company, except that done by its employés in actually operating the machinery of its mill.

That said Jackson Oil & Refining Company could make a contract with a non-manufacturing individual or corporation as an independent contractor to do all of the work done by the employés of the Jackson Oil & Refining Company, except the actual operation of its machinery, and such independent contractors could work his employés an unlimited number of hours in identically the same work done by the Jackson Oil & Refining Company, and which, merely because it is a manufacturing company, the Jackson Oil & Refining Company and the class to which it belongs, is forbidden to do by the statute of Mississippi hereinafter set forth.

IV.

Your orator avers that in all other employments, said laborers can and do make contracts to and with their employers
6 whereunder and whereby they contract and agree to work and labor for a period in excess of twelve hours, frequently upon the farm laboring as much as fifteen hours to sixteen hours a day, and in all other classes of work this type of labor is employed they can and do work for a period in exces of ten hours per day and that in said cotton seed oil mills the season for crushing embraces only from three to four months in the year and that all of its business must be done within that period and that it does not use or employ its laborers continuously, but that by working at said business of oil-milling for said period said laborers are enabled to sustain themselves that length of time.

V.

Your orator avers that the laborers, when not working for said Jackson Oil & Refining Company, are engaged as common laborers and work for a period in excess of ten hours and that in and about said mill the said laborers are but performing the last stages of the business of producing the products of cotton seed, which they have raised upon the farm by laboring for twelve hours per day and more there; that the work in and about said mill is not hazardous, injurious or deleterious in any way or to any extent to health, and that

frequently persons who are afflicted with pulmonary complaints are advised to remain and be in and about cotton seed oil mills so that they may inhale the healthful and life-giving odors thereabout.

That nearly all of the employés of the Jackson Oil & Refining Company, except those actually engaged in the operation of the machinery, work in the open air or in office buildings, or out
7 upon the railroad in the purchase and handling of cotton seed, and in the shipment and loading of cotton seed meal, oil and other cotton seed products. That the places at which the employés of said Jackson Oil & Refining Company, who actually work in the operation of its machinery, work in large, spacious and commodious buildings wherein the fresh air freely circulates and the work of such employés in so actually operating the machinery is not continuous, but at intervals as the needs of operation may require.

VI.

Your orator avers that in no department of said mill of said Jackson Oil & Refining Company is there any laborer employed whose duties require him to do anything that is at all injurious to his welfare, physical, mental or moral, and that, in fact, none of said laborers work more than eleven hours a day, and that the prohibition to contract for a period of more than ten hours is null and void, in that, it violates the provisions of the Federal Constitution as herein set forth, in that, the right to contract for said additional one hour of labor does not in any way impair the physical, mental or moral condition or welfare of any of said employés, when employed in and about a cotton seed oil mill.

VII.

Your orator avers that in the business of the Jackson Oil & Refining Company, it must come into competition with other employers of labor, if it is to hold its labor, and that all other employers of labor, and, also, of cotton seed oil mills located in the adjacent states of Louisiana, Alabama, and Tennessee and throughout the entire cotton region have and still continue to employ their labor for twelve hours, with an intermission of one hour as aforesaid, and this is requisite and necessary in order to profitably conduct said business.

8 That said Jackson Oil & Refining Company, prior to March 16th, 1912, had employed a large number of its employés by contract for the year and for hours per day in excess of ten hours and it is now forbidden by said statute to require said employés to work under said contracts.

VIII.

Your orator avers that if said Jackson Oil & Refining Company is not permitted to so employ its labor as it has done, said corporation will be rendered wholly insolvent by reason of its continued operation, and its inability to pay the greatly increased cost necessarily incident to the employment of all of said additional labor, which would be increased exactly one-third (⅓) or thereabouts, even if it could ob-

tain all of such additional labor, which it avers is not the case owing to the active demand for labor at the season of the year when oil mills are operating, and your orator avers that said Jackson Oil & Refining Company has never, during its entire course of business, been able to earn a sufficient amount to pay the additional labor item that would be thus imposed by the operation of three shifts of men which would be required if the statute is to be obeyed, and to compel it so to attempt to do would be to render its property unprofitable and absolutely valueless, contrary to the provisions of the Federal Constitution.

IX.

Your orator avers that said Jackson Oil & Refining Company and its above mentioned employés have the right, under the Federal Constitution, to contract and agree, each with the other, for the performance by the said employés of eleven hours of labor in and about its said plant; and upon information and belief, complainant avers
that the State of Mississippi is wholly powerless to prevent
9 said Jackson Oil & Refining Company and its employés from so doing, but that, nevertheless, the Legislature of said State has passed the statute hereinafter set forth, in virtue of which its said Attorney General and Assistant Attorney Generals and said County Prosecuting Attorney and said District Attorney have begun proceedings before the courts of the State, they and each of them being compelled thereby to begin such proceedings, in the belief that said statute is a valid law, and, as is their duty if said law is valid, said officers will enforce said statute, and its enormous and confiscatory penalties by proceedings against said Jackson Oil & Refining Company unless its officers obey the same, and by obedience thereto they and each of them have been and are violating the rights of liberty and of property of said Jackson Oil & Refining Company, and of this complainant.

That in the denial of the right of liberty of contract and the protection of liberty and property and the equal protection of the laws under the Federal Constitution of said Jackson Oil & Refining Company, of complainant, and of the other stockholders thereof, the Supreme Court of the State of Mississippi, at the instance of said Attorney General, and Assistant Attorney Generals, and said District Attorney of said State of Mississippi, the State of Mississippi asserting that said statute is a valid law, has commenced prosecutions to enforce the enormous and confiscatory penalties of said statute against corporations engaged in manufacturing and repairing in said state, and the Supreme Court of the State of Mississippi, the highest court of said State having jurisdiction of the subject matter,
has recently decided that said statute was a valid exercise of
10 the police power of the State of Mississippi in the suit of the State of Mississippi v. J. J. Newman Lumber Company, which suit was an indictment in the Circuit Court of Forrest County, State of Mississippi, of the J. J. Newman Lumber Company, as a manufacturing corporation, for working its employés more than ten hours a day; and upon a demurrer to the several counts of said indictment, said Circuit Court held said statute to be violative of the

Federal Constitution and sustained the demurrer to the several counts of said indictment; that thereupon an appeal was taken by the State of Mississippi, as provided by law, from said judgment, and said Supreme Court of the State of Mississippi held said statute not to be in violation of the Federal Constitution, and reversed the judgment and remanded the cause to the Circuit Court of Forrest County for further proceedings; that thereupon, under the practise of said Supreme Court, a suggestion of error was filed, and said cause will be further heard in the Supreme Court of the State of Mississippi where it is now pending on Suggestion of Error. If said Supreme Court adheres to its judgment and opinion, then the cause would be remanded to trial at some subsequent term of the Circuit Court of Forrest County, and thus the authoritative decision of the federal question involved cannot be had for a long time.

A copy of the opinion of the Supreme Court of the State of Mississippi is herewith filed, marked Exhibit "A" hereto, and made a part hereof as if fully copied herein.

Complainant avers, upon advice, that the Supreme Court of Mississippi on this federal question is but an intermediate court, and that it failed to follow and give effect to the opinions and decisions
11 of the Supreme Court of the United States by which said Supreme Court was bound, and especially by failing to give effect to the opinion and decision of the Supreme Court of the United States in the case of Lochner v. People of New York, 198 U. S., 46.

X.

Your orator avers that at the present time, said Jackson Oil & Refining Company is in the very middle of this season's business and that said Gowdey is the manager thereof, and that it is essential for said Jackson Oil & Refining Company's employés, as aforesaid, to work for a period of eleven hours each day for each crew, but that the said Gowdey, General Manager of the said Jackson Oil & Refining Company, is afraid to assert its rights so to contract under the Federal Constitution, but has been and is intimidated by said above named respondents who threaten to and will under said statute compel obedience thereto, through numerous and multitudinous suits to be brought in said state.

That said act of the Legislature of the State of Mississippi so interpreted is as follows:

Chapter 157, *Laws of Mississippi*, 1912, *p.* 165.

"An Act to prohibit persons, firms or corporations engaged in manufacturing or repairing, from working their employés more than ten hours per day, except in cases of emergency, or where public necessity requires, and fixing the penalty for such violation.

"Employés Not to be Worked Over Ten Hours in Certain Cases.

"SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That it shall be unlawful for any person, firm or corporation engaged in manufacturing or repairing to work their employés

more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

12 "Penalty for Violation of this Act.

"SECTION 2. That any person, firm or corporation violating this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense.

"SECTION 3. That this act shall take effect and be in force from and after July 12th, 1912."

"Approved March 16th, 1912."

XI.

Your orator avers that said Chapter 157, violates the Constitution of the United States, in that,—

It violates the Fourteenth Amendment in that,—(*a*) It denies to the Jackson Oil and Refining Company the right to purchase, and to its employés to sell their labor; (*b*) It denies to "persons, firms or corporations engaged in manufacturing or repairing from working their employés more than ten hours per day" when persons, firms or corporations not engaged in manufacturing or repairing may work their employés, in identical kinds of work, for any period of time, thereby making an unreasonable and arbitrary classification; (*c*) It denies complainant and Jackson Oil & Refining Company liberty and property without due process of law, in that, it compels said manufacturing corporation, because it is a manufacturing corporation, and for no other reason, to employ a large and unnecessary force of employés, at a large and unreasonable and unnecessary expense, and whereby complainant's investment in the property of said mill would be rendered unprofitable, when the force *on* employés of said mill, without said extra force of employés, were able and willing to do the work of said mill in shifts or relays of twelve (12) hours, thereby, by statute, compelling com-

plainant and said Company to suffer this great loss of its
13 property. (*d*) That it violates Article I, Section 10, Clause 1, in that, it impairs the obligation of the contracts of said Jackson Oil & Refining Company with its employés. (*e*) That said officers of said Jackson Oil & Refining Company are anxious and willing to disobey said statute, but its enormous and confiscatory penalties of $50.00 a day for each offense, and said day's violation in the employment of each employé constitutes a separate offense, and the penalties are so great that said officers, in the administration of said mill, through fear, are compelled to and do obey the said statute and will so continue until restrained by the process of this court.

XIII.

Your orator avers that said employés of said Jackson Oil & Refining Company are desirous of earning as much as possible, and that they and each of them have always been and are now anxious

and willing to work for a period of said eleven hours per day for said corporation, and earn therefor the usual payment in that behalf, but that said executive officers, contrary to the rights of your orator, have failed and refused to suffer and permit said employés so to work, and have compelled them to desist from working in accordance with the desire of said employés, contrary to the rights of your orator, and the said provisions of the Federal Constitution.

XIII.

Your orator avers that the right to contract as to said business is purely private and personal, and that the labor to be performed is not in any way detrimental or deleterious to health or safety, and that said law attempting to interfere therewith is arbi-
14 trary and discriminatory and in contravention of the Federal Constitution, in that, the parties desire to make contracts for the usual customary amount of work; that they and each of them are competent so to do, and that unlawfully, under said pretended statute, said officials of the State of Mississippi have prevented and are preventing and threaten to continue to prevent said parties from so making said contracts and performing their labor in accordance therewith.

XIV.

Your orator's rights as a stockholder in said corporation are being violated by the executive officers of said corporation, and said corporation is being rendered insolvent by said executive officers by reason of said pretended law and the wrongful enforcement thereof by persons named in the caption hereof, and that by continuing to operate said mill plant in accordance with said alleged statute, your orator's property is being taken under said invalid statute, and that by reason of the severe penalties, the executive department of said mill refrains from operating said mill as it should be operated, but persist in disregarding the rights of your orator by conforming to said alleged statute, although in so continuing to do, they recognize that by their actions they are rendering said corporation unprofitable and ultimately insolvent. Said Jackson Oil & Refining Company has on hand a large amount of cotton seed, which it is necessary to crush, and that said officers are willing to lawfully run said mill, if protected against the said illegal acts of said officers, which will be continuous under said alleged statute, unless the unconstitutional provisions thereof are conformed to.

15 XV.

Your orator avers that the penalties fixed by law are so confiscatory as that no owner or operator of a cotton seed oil mill could invoke the jurisdiction of a court to test the validity thereof, except at the risk of confiscation of its property, and the destruction of its rights.

Your orator avers that said executive officers of said Jackson Oil & Refining Company are anxious to lawfully run said mill, but are

prevented from so doing by the threats of the above named defendants, who, if said mill was lawfully operated, would, by reason of the multitudinous suits and penalties that would be sought to be collected, confiscate the property of the Jackson Oil & Refining Company and of your orator through divers and sundry criminal proceedings, whereunder and whereby its property would be taken.

Your orator avers that said statute interferes with the right of property of said Jackson Oil & Refining Company, its employés and your orator, and that a multiplicity of suits will be originated and an enormous amount of costs and penalties be created by reason of said illegal act, unless said officials are restrained as hereinafter prayed:

XVI.

Your orator avers that he is without adequate remedy at law, and that irreparable damage will result to your orator unless the enforcement of said alleged statute is restrained and enjoined, and that he is entitled to have an injunction and a writ of injunction issued restraining the said officers and Jackson Oil & Refining Company from carrying into effect said pretended statute and
16 restraining said officials of the State of Mississippi and of the County of Hinds, named in the caption of this bill and defendants hereto, from enforcing the same.

That since the opinion was delivered in said case of State v. J. J. Newman Lumber Company, a criminal prosecution of the Buckeye Cotton Oil Company, a manufacturing corporation engaged in the manufacture of cotton seed oil, meal and hulls from cotton seed, and engaged in identically the same occupation as the Jackson Oil & Refining Company, has been proceeded against by affidavit, under Chapter 157, Laws of Mississippi of 1912, in the Justice Court of Hinds County, First District, State of Mississippi, and there convicted under said statute, and defendant therein has appealed therefrom to the Circuit Court of Hinds County, First District, State of Mississippi, where said prosecution is pending.

That said law officers of the State of Mississippi, defendants hereto, will continue to prosecute the manufacturers of cotton seed oil products, and especially Jackson Oil & Refining Company, if they disobey said statute, unless restrained therefrom by this Honorable Court from instituting or causing to be instituted, prosecuting, or causing to be prosecuted, any proceeding, either at law or in equity, civil or criminal, to recover of the Jackson Oil & Refining Company any forfeitures, fines or penalties for the violation of the provisions of the Act of the State of Mississippi, being Chapter 157, Laws of Mississippi of 1912, approved March 16, 1912, entitled:

17 "An act to prohibit persons, firms or corporations engaged in manufacturing or repairing, from working their employés more than ten hours per day, except in cases of emergency or where public necessity requires and fixing the penalty for such violation," and that said injunction, upon final hearing, be made perpetual.

Complainant avers that he is a shareholder of the said Jackson

Oil & Refining Company, and was such at the time of the transaction of which he complains, and that this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it otherwise would not have cognizance. That the officers and directors of said Jackson Oil & Refining Company, for the reasons hereinbefore stated, will not disobey said Chapter 157, Laws of Mississippi of 1912, and complainant could not require them, by reason of the severity of the penalties incurred by such refusal, if such act should be held to be constitutional, to file this suit.

Prayer.

Wherefore complainant prays that the parties named in the caption of this bill be made parties defendant hereto, and for process of summons returnable to the next rule day of this court, and that they be required to plead, answer or demur thereto; answer under oath being expressly waived. That an injunction and a writ of injunction issue, restraining said W. B. Gowdey and the said officers of said Jackson Oil & Refining Company, and the Jackson Oil & Refining Company from carrying into effect said pretended statute, and that said Ross A. Collins, Attorney General of the State of Mississippi, Frank Johnston, First Assistant Attorney General, George Ethridge, Second Assistant Attorney General, J. H. Howie, District Attorney of the Seventh Circuit Court Judicial District
18 of the State of Mississippi, and O. B. Taylor, County Prosecuting Attorney of Hinds County, Seventh Judicial District of Mississippi, be restrained and enjoined from enforcing said statute, Chapter 157 of the Laws of Mississippi of 1912, and from instituting or causing to be instituted, prosecuting or causing to be prosecuted any action in law or equity, civil or criminal, to recover of the Jackson Oil & Refining Company any fines, forfeitures, or penalties, for the violation of the provisions of said Chapter 157 of the Laws of Mississippi of 1912, by employing or continuing to employ their employés at work for a longer period than ten hours per day, and that this injunction on final hearing be made perpetual. Or, if mistaken in the relief prayed, for such other, further or general relief as the case stated may demand and to your honors may seem meet.

(Signed) G. W. WATHEN,
By E. R. SLOAN,
Att'y in Fact.

UNITED STATES OF AMERICA,
Southern District of Mississippi, Jackson Division:

Personally appeared before me the undersigned E. R. Sloan, who being by me first duly sworn, on oath states that he is the agent of G. W. Wathen, the complainant in the foregoing bill, having authority to make this affidavit, and that the matters and things stated in the foregoing bill as of knowledge are true, those stated on information, of affiant's own information he verily believes to be true.

E. R. SLOAN.

Sworn to and subscribed before me this 30th day of November, 1912.

[L. S.]

L. B. MOSELEY, *Clerk*,
By B. L. TODD,
Dep. Clerk, Southern District of Mississippi.

GREEN & GREEN,
HIRSH, DENT & LANDAU,
WHITFIELD, McNEILL & WHITFIELD,
Solicitors for Complainant.

Endorsed: Filed November 30th, 1912. L. B. Moseley, Clerk.

19 EXHIBIT "A" TO ORIGINAL BILL.

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

STATE
v.
J. J. NEWMAN LUMBER CO.

REED, *J.*:

The indictment in this case alleges that the appellee is a corporation, organized under the laws of this state; that it owned, controlled and operated a saw and planing mill plant, and logging railroad in connection therewith, and was engaged in the manufacture of lumber and the repairing of its machinery used in and about its plant and railroad, and charges that it worked one of its employés more than ten hours per day, not in a case of emergency or where public necessity required, contrary to chapter 157 of the laws of Mississippi of 1912.

There are nine counts in the indictment, each being a charge for working an employé in the different departments of appellee's manufacturing enterprises. Counsel for appellee in his brief states that no point is made as to the form of the indictment. Appellee filed a demurrer to the indictment, which was sustained, and from which the state prosecutes the present appeal.

20 Chapter 157 of the Laws of Mississippi.

Employés Not to Be Worked Over Ten Hours in Certain Cases.

SECTION 1. Be it enacted by the legislature of the state of Mississippi, That it shall be unlawful for any person, firm or corporation

engaged in manufacturing or repairing to work their employés more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

SECTION 2. That any person, firm or corporation violating this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense.

While there are seventeen grounds set out in the demurrer, yet, they all may be considered in the question of the constitutionality of the law. In order to see fully appellee's contention that the law is violative of our national and state constitutions, we quote the second ground of demurrer, which is as follows:

"It appears from the face of said indictment that it is based on chapter 157, laws of Mississippi, 1912, which act is discriminatory, unconstitutional, invalid and void, and the said indictment is insufficient in law for the following reasons:

"(*a*) It is violative of section 14, constitution of Mississippi, 1890, because it deprives said defendant, and those sought to be
21 made liable thereunder, of liberty and property without due process of law.

"(*b*) It is violative of section 16 of said Mississippi constitution, because it impairs the obligation of contracts between the said defendant, as employer, and its said employés, as well as of contracts between all employers and employés embraced within its terms.

"(*c*) It is violative of section 24 of said Mississippi constitution, because its provisions operate injuriously to the person and property of said defendant and others sought to be made liable thereunder, and deny to said defendant and such others, 'remedy by due course of law,' and the 'right and justice' guaranteed by said constitutional provision.

"(*d*) It is violative of section 10, article 1, of the constitution of the United States, prohibiting any state from passing a 'law impairing the obligation of contracts,' because it impairs the obligation of the contracts alleged to have existed between the said defendant and its said employés.

"(*e*) It is violative of section 1 of the fourteenth amendment to the constitution of the United States in three particulars: (1) It abridges the privileges and immunities of the said defendant, a citizen of the United States. (2) It deprives the said defendant of liberty and property without due process of law. (3) It denies to the said defendant, a citizen of the said state of Mississippi and
22 of the United States, 'the equal protection of the laws.'

"(*f*) It is violative of that portion of section 2, article 6 of the constitution of the United States, which makes that instrument and the laws made in pursuance thereof, 'the supreme law of the land,' because it is unreasonable, unjust, arbitrary and discriminatory, and interferes with the property, liberty, rights, privileges and immunities of the said defendant, and others sought to be made liable thereunder, protected by the aforesaid provisions of the constitution of the United States."

It will be seen that a corporation in this state is charged with working the men in its employ for over ten hours a day—the indictment says for eleven hours—contrary to the statute which prohibits such extended hours of labor. In defense, the appellee claims that the state had no authority to enact such law; that it was contrary to the limitations of the federal and state constitutions; that the law impairs the obligation of contracts, abridges the privileges and immunities of the citizen, deprives him of liberty and property without due process of law, and denies him the equal protection of the laws; and that the law is unreasonable, unjust, arbitrary and discriminatory, interferes with the property, liberty, rights, privileges and immunities of the citizen, and is, therefore, condemned by the constitution of the United States.

There has been already in this country much discussion of the laws, like the statute now before us, commonly known as "labor laws." It seems to be settled that the legislatures of the states have the power to enact proper laws to regulate and provide for the "safety, the health, the morals, and the general welfare of the public." Appellee contends that the legislature of Mississippi
23 was not within that power when making the regulation that the laborer in manufacturing and repairing plants should not be worked longer than ten hours per day.

In considering questions like the present one it is well for us to look at the organization of our nation. In forming our government, "of the people, by the people, and for the people," the individual surrendered many of his personal liberties. This was necessary. We could not have had government otherwise. No society can continue without its members being required to give up some of what they deem are their personal rights and liberties. We cannot imagine any successful government where everyone has the privilege of doing what pleases him. Regulations and rules for the control of conduct accompany as a very necessity every organization. This truth applies not only to an association of persons but as well to the individual. Every person who succeeds finds it necessary to control his life by strong rules, some times very hard to obey. Recognizing all this, our forefathers, in their wisdom, planned to make the necessary rules for governing the people. They bestowed this power upon certain representatives of the people called legislators. In order to give stability to the statutes to be enacted a constitution, consisting of certain fundamental rules and regulations, was ordained and established. The general governing of the people was at the time and has continued in the several states, which together formed the Union known as the United States. Article X of the federal constitution recognizes this when it states, "The powers not delegated to
24 the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The states when organizing ordained and established their constitutions. In Mississippi, the powers of government were bestowed upon three departments—legislative, judicial and executive. Section 33, article 4, of Mississippi's constitution clearly announces that

"the legislative power of this state shall be vested in the legislature." It is declared in section 5, article 3, of the same constitution that "All political power is vested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."

It is, therefore, incumbent upon the legislature, to enact all laws necessary for regulating the conduct of the people and the proper use of their property. It is often true that persons will deem their liberties abridged, or the unlimited enjoyment of their property interfered with. Since the beginning of government this has been so; it will continue so long as persons decide from a selfish standpoint and not from a consideration of the welfare of all citizens. It is the duty of the legislature to consider the interests of all—what is best for society generally. As seen in the foregoing quotation from our state constitution, it is enjoined upon the law-makers that "government is instituted solely for the good of the whole." They are necessarily the judges of what is for the good of the citizens.

Seeing that the power to enact necessary and proper laws is granted to the legislature and the legislators, in the very nature of the case must decide what are such laws, then it is plain that the courts should be very careful before holding that any law passed touching the welfare of the citizens is not within the limitations of the constitutions. The duty of the court is to construe the law, apply it to the case presented, and may decide that it is contrary to the fundamental laws which we call our constitutions. But it is not for the court to decide whether a law is needed and advisable in the general government of the people. This is being more and more recognized by the courts in their consideration of questions of constitutionality. In a recent case, Noble State Bank v. Haskell, 219 U. S., 104, the United States supreme court, speaking through Mr. Justice Holmes, said: "In answering that question, we must be cautious about pressing the broad words of the fourteenth amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the bill of rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the states is limited by the constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the law-making power."

It is certainly true that the power of the state to enact laws for the government of its people, which is usually called the police power of the state, extends at least to the lives, the health, the general welfare and safety of the public, and against the wrongful or injurious exercise by any citizen of what he may deem his rights.

The supreme court of the United States has "with marked distinctness and uniformity recognized the necessity growing out of the fundamental conditions of civil society of upholding state police regulations which were enacted in good faith, and had appropriate and

direct connection with that protection to life, health and property which each state owes to her citizens." Patterson v. Kentucky, 97 U. S., 501.

It was not the purpose of the 14th amendment to prevent in any manner the state from making the proper regulations for the promotion of the health, peace, morals, education and good order of the people. Barbier v. Connolly, 113 U. S., 27.

Of course, the state cannot by its laws unduly and unnecessarily interfere with a person in the exercise of his inherent rights or the unlimited control and use of his property. At the same time it must be borne in mind that the rights of an individual must at all times be subordinate to the welfare and best interests of society.

27 The law of this state now under discussion makes it unlawful for any employer in a certain class to work employés more than ten hours per day, except in cases of emergency or where public necessity requires. The legislature in enacting this law decided it was a regulation needed among the class of the citizens mentioned; that it was for their best welfare, and that the interests of the public required the law.

It is contended by appellee that the definition of those in the class mentioned in the law is too general, and that it is difficult to limit those who may be engaged in manufacturing or repairing. It does not seem to have been difficult in the instant case. The indictment charges that the men employed were at work in different departments of appellee's manufacturing plant, and that appellee was operating such a manufacturing enterprise, and was also engaged in the work of repairing all kinds of engines, boilers, locomotives, cars, and machinery used in and about the mill plant and the logging railroad. It will be seen therefore, that appellee's enterprise included both manufacturing and repairing in its work. A reasonable definition may be given to manufacturing (Century dictionary) as the system of industry which produces manufactured articles, and to manufacture as the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities and properties, or combinations, whether by hand-labor or machinery, used more especially, of production in a large way by machinery or many hands working co-operatively. Repair is to make whole, or restore an article or thing to its completeness. In the general knowledge of the affairs of business and life, it will hardly be difficult

28 to class those persons who are engaged in such employment.

It is proper to say that in the early history of the state such persons, because of the very small amount of manufacturing business carried on, were few in number, the large body of the citizens then following agriculture, but in recent years, on account of the rapid increase in manufacturing enterprises in this state, the same class of persons have grown to a great number, and there is every reason to believe that their number will steadily increase. It is not improper to conclude that the legislature had all this in mind when the law was enacted and decided that it would affect many of the future citizens of Mississippi. If it is true that the enactment of this law is for the welfare of the classes affected, and for the best interests of the

whole people, then even appellee's right to contract with the laborers named must be subject to the restraints demanded by the safety and welfare of the state. Knoxville Iron Co. v. Harbison, 183 U. S., 13.

The controlling question in this case is whether the law before us is for the welfare of the people, and whether it will promote the health, morals and good order of the people affected. In other words, whether it will be a benefit to them.

It is said in the case of Gundling v. Chicago, 177 U. S., 183, that "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business, or occupation they shall apply, are questions for the state to determine, and their determination comes within the proper exercise of the police power by the state, and, unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for federal interference.

In the case of Holden v. Hardy, 169 U. S., 366, it is declared that "the protection of the health and morals, as well as of the lives of citizens, is within the police power of the state legislature." In that case the act of the legislature of Utah, passed in 1896, regulating the hours of employment in underground mines, was attacked. Section 1 of that act reads: "The period of employment of working men in all underground mines or workings shall be eight hours per day, except in cases of emergency, where life or property is in imminent danger." This statute was upheld by the supreme court. The objections made in that case were practically the same as those made by appellee in the case before us, that is, on the ground of abridging their immunities, depriving them of their property, and denying them the protection of the laws. The court therein considered the objections together, just as we are doing in the instant case. Mr. Justice Brown, in delivering the opinion of the court, discusses the progresses in our laws and the necessity for changes as new conditions arose and referring to these he said: "They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the constitution of the United States, which is necessarily and to a large extent flexible and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

It is also well known that in the progress of society the relations between employer and employé have changed. Such law as that before us in the instant case may not have been needed half a century ago, but may be needed at the present time. In fact, the de-

partment of the government of this state, known as the legislature, has decided that the law is needed.

Under the subject of impairing the obligation of contracts, Mr. Justice Brown, in Holden v. Hardy, supra, said: "This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expended in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employés as to demand special precaution for their well-being and protection, or the safety of adjacent property." And in Commonwealth v. Alger, 7 Cushman, 84,
31 it is said: "We think it a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient."

Counsel for appellee in his brief contends that the instant case is controlled by the case of Lochner v. New York, 198 U. S., 46. In that case it was decided that the limitation of employment in bakeries to sixty hours a week, and ten hours a day, under the New York laws, 1897, is an arbitrary interference with the freedom to contract guaranteed by the United States constitution, fourteenth amendment, which cannot be sustained as a valid exercise of the police power to protect the public health, safety and morals, or general welfare. A careful consideration of that case fails to show us that it should control the case before us. It seems that the statute omitted the exception in the Mississippi statute, which is in the following words, "except in cases of emergency, or where public necessity requires." It will be noted that in the case of Holden v. Hardy, supra, the Utah statute contained this exception. Mr. Justice
32 Peckham, in Lochner v. New York, states that, "the mandate of the statute that no employé shall be required or permitted to work, is the substantial equivalent of an enactment that no employé shall contract or agree to work more than ten hours per day, and as there is no provision for special emergencies, the statute is mandatory in all cases." And in another portion of the decision, in referring to the Utah statute above mentioned, he said: "It will be observed that even with regard to that class of labor the Utah statute provided the cases of emergency wherein the provisions of the statute would not apply. The statute now before this court has no emergency clause in it, and if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of

the provisions of the act would be innocent." It will be noticed also that the decision in Lochner v. New York, supra, was not unanimous, four of the distinguished members of the bench, Mr. Justice Harlan, Mr. Justice White, the present eminent chief justice, Mr. Justice Day, and Mr. Justice Holmes dissenting. Both Mr. Justice Harlan and Mr. Justice Holmes wrote dissenting opinions.

Mr. Justice Harlan in his dissenting opinion said: "Granting, then, that there is a liberty of contract which can not be violated even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the state may reasonably prescribe for the common good and the well being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for the rule is universal that a legislative enactment, federal or state, is never to be disregarded
33 or held invalid unless it be, beyond question, plainly and palpably in excess of legislative power. * * *

"It is plain that this statute was enacted to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employés in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation it is not the province of the court to inquire. Under our systems of government the courts are not concerned with the wisdom or policy of legislation. So that, in determining the question of power to interfere with liberty of contract, the court may inquire whether the means devised by the state are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. * * * I take leave to say that the New York statute, in the particulars here involved, cannot be held to be in conflict with the 14th amendment, without enlarging the original purpose, and without bringing under the supervision of this court matters which have been sup-
34 posed to belong exclusively to the legislative departments of the several states when exerting their conceded power to guard the health and safety of their citizens by such regulations as they in their wisdom deem best. Health laws of every description constitute, said Chief Justice Marshall, a part of that mass of legislation which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves."

Mr. Justice Holmes in his dissenting opinion said: "This case is decided upon an economic theory which a large part of the country

does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we, as legislators might think injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient. A more modern one is the prohibition of lotteries. The liberty of a citizen to do as he likes so long as he does not interfere with the liberty of others to
35 do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the post office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not."

In discussing the obligation of contracts, this court said in the case of Mississippi Society v. Musgrove, 44 Miss., 836, "Individuals must be considered as making their contracts and covenants subject to the contingent right in the state (with the just application of the principles) of partial impairment or total abrogation of their contracts.

In the case of Moore v. State, 48 Miss., 147, wherein it was decided that the law prohibiting lotteries in the state was constitutional under the general subject of the police power of the state, Simrall, J., said: "The legislative authority rests upon the right, in all these instances, to take care of the health, happiness, morals and welfare of the community. It is a paramount duty to preserve the public safety. Therefore, the tenure by which private property is held, and the uses to which it is devoted, is subordinate to the police authority and is not affected and embraced by those provisions of the constitution which confer on congress the regulation of foreign and interstate commerce, and the inhibition of laws impairing the obligation of contracts. * * * The line which separates the constitutional from the unconstitutional exercise of power on these and many other subjects is dim and shadowy. It is not possible to lay down a general rule of universal application. There is a region where certainty ends and doubt begins. There is no safer rule to guide the judicial mind in all cases of well founded doubt as to the constitutionality of a law than to refer to the law-making department. To pronounce a law invalid, the judiciary must dis-
36 tinctly perceive and point out its conflict with the organic law."

In the case of Hart v. State, 87 Miss., 171, it was decided that "a statute is not to be condemned as unconstitutional unless it plainly conflicts with some provision of the fundamental law, and conflicts will be presumed." And in a recent case, Natchez and Southern R. R. Co. v. Crawford, 99 Miss., 697, it is decided that "where a statute is fairly susceptible to two constructions, one of which would render it unconstitutional, the courts will adopt the construction

which will render it constitutional. All doubts are resolved in favor of the constitutionality of a statute."

In the case of Bobo v. Y. & M. V. Delta, 92 Miss., 792, it is decided that "the supreme court has not power to pass upon the wisdom or policy of a statute attacked for unconstitutionality."

Laws regulating the time when men shall labor are not new. The changed conditions during recent years in the business and affairs of the people have brought the discussion of such laws and their apparent necessity fresh to the minds of the present-day thinker; but if we will look back through the ages we will find such regulations in the laws of the nations. Particularly, we see them in the statutes governing Jehovah's ancient people, Israel. The greatest lawmaker, who received his inspiration to prepare the ordinances for the government of his people direct from Jehovah, and whose laws have always been admired and approved, wrote special statutes regulating the time in which people should work, and regulating the use of their property. Exodus 23: 10 and 11 is as follows: "And six years thou shalt sow thy land, and shalt gather in the
37 increase thereof: but the seventh year thou shalt let it rest and lie fallow: that the poor of thy people may eat: and what they leave the beast of the field shall eat. In like manner thou shalt deal with thy vineyard, and with the oliveyard." And notice the provision in Exodus 23: 12 limiting the time in which the laborer shall work: "Six days thou shalt do thy work, and on the seventh day thou shalt rest: that thine ox and thine ass may have rest, and the son of thy handmaid, and the sojourner may be refreshed."

In the ordinance contained in the Pentateuch, which follows the fundamental law known to us as the commandments, are many other provisions similar to those above mentioned, and intended to regulate and limit the conduct of the people of Israel.

It hardly seems to *to* be an unreasonable limitation upon the rights of the people to provide that ten hours should be enough for a day's work, especially when it is coupled with a proviso so this time may be exceeded in cases of emergency or when public necessity requires.

It is well known that in the work connected with the running of machinery that the operator is subjected to a mental as well as physical strain. In many cases the nearness to machinery makes the work dangerous in case of an overtaxing of the strength of the worker, or any lessening in his alertness. We can readily understand that all this was in the minds of the legislature when the law now under discussion was considered. Besides, it would not be unreasonable for the legislature to decide that it would promote the health, peace, morals, and general welfare of all laborers
38 engaged in the work of manufacturing or repairing if they were not permitted to extend their labor over ten hours a day, and the legislature could also decide that the best interests of the people in the state would be promoted by limiting the time to work to this numerous class of its citizens to the time mentioned. In fact, when we consider the present manner of laboring, the use of

machinery, the appliances, requiring intelligence and skill, and the general present-day manner of life which tends to nervousness, it seems to us quite reasonable and in no way improper to pass such law so limiting a day's labor.

Therefore, we cannot agree with the contention of appellee that the act in question is "an unreasonable, unnecessary, and arbitrary interference with the property, liberty, rights, privileges, and immunities of those engaged in *the* manufacturing or repairing, and their employés." The legislature of Mississippi has decided that this is not so, and we abide by their decision.

The objection to the statute contained in the several other grounds of demurrer, besides those directed to its constitutionality, have been fully answered by us in this opinion, and it will be seen that we do not consider such objections sufficient.

Reversed and remanded.

Endorsed: Filed Dec. 3, 1912. L. B. Moseley, Clerk.

39 *Summons.*

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States to the Marshal of the Southern District of Mississippi, Greeting:

You are hereby commanded, without delay, to summon Jackson Oil & Refining Company, Ross A. Collins, Attorney General, State of Mississippi, Frank Johnston, First Assistant Attorney General State of Mississippi, George Ethridge, Second Assistant Attorney General State of Mississippi, W. B. Gowdey, J. H. Howie, District Attorney Seventh Circuit Court District State of Mississippi, O. B. Taylor, County Attorney for the County of Hinds, State of Mississippi, citizens of the State of Mississippi, to appear before the District Court of the United States for the Southern District of Mississippi at the City of Jackson, at Rules, to be holden in the Clerk's office of said Court, on the First Monday in January next, to answer a Bill in Equity exhibited against them by G. W. Wathen, which is on file in the clerk's office at Jackson, Mississippi, a citizen of the State of New York and unless they shall enter their appearance therein, in the Clerk's office aforesaid, on or before the time specified above, the said Bill will be taken for confessed. And have then and there this Writ, and how you have executed same.

Witness the Honorable H. C. Niles, Judge of the District Court of the United States, and the Seal of our said District Court, this the 30th day of November A. D. 1912.

40 The defendants, the Jackson Oil & Refining Company, W. B. Gowdey, Ross A. Collins, Frank Johnston, George Ethridge, O. B. Taylor, J. H. Howie, are hereby notified that they be required to enter their appearance in the Clerk's office of the United States District Court, on or before the First Monday of January, 1913, otherwise the bill may be taken pro confesso.

[L. S.] L. B. MOSELEY, *Clerk.*

Endorsed: Executed the within process on the following by reading this original to them, and handing each a true copy of same, Jackson Oil & Refining Company, W. B. Gowdey, Manager Jackson Oil & Refining Company, Frank Johnston, Ross A. Collins, Attorney General State of Mississippi, George H. Ethridge, Ass't Attorney General State of Mississippi, J. H. Howie, District Attorney, and O. B. Taylor, County Attorney of Hinds County, Mississippi.

W. O. LIGON,
U. S. Marshal.
B. L. TODD, *Deputy.*

November 30th, 1912.

Endorsed: Filed Dec. 17, 1912. L. B. Moseley, Clerk.

41 *Motion for Interlocutory Injunction.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Motion for Preliminary or Interlocutory Injunction.

Comes the complainant, by solicitors, and moves the court on the bill herein, duly verified, to grant a preliminary or interlocutory injunction, as prayed in the original bill herein, and upon notice duly served upon His Excellency, Hon. Earl Brewer, Governor of the State of Mississippi, and the defendants herein, of the time and place of this application for the grant of this injunction.

GREEN & GREEN,
HIRSH, DENT & LANDAU,
WHITFIELD, McNEILL & WHITFIELD,
Solicitors for Complainant.

HON. ROSS A. COLLINS,
Attorney General of the State of Mississippi;
HON. FRANK JOHNSTON,
First Assistant Attorney General;
HON. GEORGE ETHRIDGE,
Second Assistant Attorney General;
HON. J. H. HOWIE,
District Attorney of the Seventh Circuit Court Judicial District;
HON. O. B. TAYLOR,
County Prosecuting Attorney of Hinds County, Mississippi,
Contra.

Endorsed: Filed Nov. 30, 1912. L. B. Moseley, Clerk.

42 *Notice of Application for Interlocutory Injunction.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

To His Excellency Hon. Earl Brewer, Governor of the State of Mississippi; Hon. Ross A. Collins, Attorney General of the State of Mississippi; Hon. Frank Johnston, First Assistant Attorney General; Hon. George Ethridge, Second Assistant Attorney General; Hon. J. H. Howie, District Attorney of the Seventh Judicial District of the State of Mississippi, and Hon. O. B. Taylor, County Prosecuting Attorney of Hinds County, Seventh Judicial District of the State of Mississippi; Jackson Oil & Refining Company, and W. B. Gowdey, defendants in said suit, Greeting:

You are hereby notified that on the 6th day of December, 1912, at the court-room of the United States Circuit Court of Appeals, for the Fifth Circuit, at New Orleans, Louisiana, at 10 o'clock A. M., or as soon thereafter as this application can be heard, complainant, by solicitors, will move the Judges composing said court, to make the interlocutory injunction as prayed in the original bill herein, at which time and place you may appear and resist said application if you so desire.

Respectfully,
GREEN & GREEN,
HIRSH, DENT & LANDAU,
WHITFIELD, McNEILL & WHITFIELD,
Solicitors for Complainant.

43 We hereby acknowledge service of the foregoing notice and receipt for a copy thereof this 30th day of November, 1912.

W. B. GOWDEY.
JACKSON OIL & REFINING COMPANY,
By W. B. GOWDEY.
GEO. H. ETHRIDGE,
Ass't Attorney General.
J. H. HOWIE,
District Attorney Seventh Judicial District.
EARL BREWER,
Governor of the State of Mississippi,
By W. J. BUCK, *Private Sec't'y.*
ROSS A. COLLINS,
Attorney General.
FRANK JOHNSTON,
Ass't Attorney General.
O. B. TYLER,
County Attorney Hinds County.

Endorsed: Filed December 4, 1912. L. B. Moseley, Clerk.

44 *Demurrer.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division. In Equity.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

And now come the defendants, (except the Jackson Oil & Refining Company and W. B. Gowdey), herein by their solicitor and not confessing any of the many errors, irregularities and deficiencies in the bill filed in this case by the complainant, and reserving all manner of exception thereto, now say to the court, that the said bill is insufficient in law, and should not be maintained by this Honorable Court; and the defendants hereby demur to the same, and for grounds of demurrer, assign the following:

1st. G. W. Wathen, the complainant, as a stockholder of the Jackson Oil & Refining Company, has no right to file or to maintain his said bill of complaint touching the matters therein set forth; the said Jackson Oil & Refining Company is the corporation defendant which is localized in its business and corporate functions in the State of Mississippi and is perfectly competent to take such steps in its own name and in its own right for the proper legal protection of its interests in the premises.

2nd. The complainant has no interest in this suit according to the statements in the bill which are averse to the interests of the Jackson Oil & Refining Company. In other words, the interests of
45 this complainant and the Jackson Oil & Refining Company and W. B. Gowdey, who is simply an employé of the Jackson Oil & Refining Company, are identical in all respects, and therefore, this is not a proper suit which a shareholder, or a stockholder in this corporation can maintain.

3rd. No stockholder of this corporation, or any similar corporation, can maintain a bill in equity in the Federal Court to enjoin the Governor and the other legal and executive officers of the State Government from enforcing the criminal law in the State of Mississippi.

4th. While this bill in form is against the defendants, as individuals, yet in fact, and in truth, this is a bill by the stockholders of a corporation doing business in Mississippi to enjoin the State of Mississippi from the enforcement or administration of one of its criminal laws on the statute books of the State, and no such suit can be maintained in the Court of Equity in Mississippi, whether it is a Federal or a State Court.

5th. In any view, this bill is prematurely filed in this, that no proceedings have been begun, either of a criminal or a civil character, against the Jackson Oil & Refining Company and therefore, this bill is founded upon a mere apprehension of the complainant and not upon any real infringement of any alleged, or supposed, rights of

the Jackson Oil & Refining Company, or of himself as a stockholder in said corporation.

6th. This Honorable Court has no jurisdiction of a suit of this character in equity whose sole object is to prevent the administration of the criminal jurisprudence of a sovereign State by an injunction against the enforcement of one of the criminal laws of the State which is, in effect, a proceeding in truth, and in fact, and in substance, to enjoin a sovereign State from enforcing its criminal jurisprudence within its own territorial limits.

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7th. This suit is the same in effect as if it was brought by the Jackson Oil & Refining Company, a corporation, which has localized itself in Mississippi, and is carrying on business under the permissive authority of the State, having filed its articles of incorporation, or its charter with the Secretary of State, and thus acquired the right, under the sovereign authority of the State of Mississippi, to do a local business in the State.

Wherefore, no stockholder of said corporation can intervene in this manner by a bill in equity in this Honorable Court to enjoin proceedings in the Federal jurisdiction against the Jackson Oil & Refining Company.

And for other causes of demurrer to be stated on the hearing.

ROSS A. COLLINS,
Attorney General.
FRANK JOHNSTON,
Assistant Attorney General.
GEO. H. ETHRIDGE,
Assistant Attorney General.

I hereby certify that in my opinion this demurrer is properly taken, and should be sustained, and that it is not filed for any purposes of delay, but on the contrary, in order that a speedy decision may be reached in the case.

FRANK JOHNSTON,
Assistant Attorney General.

Endorsed: Filed Dec. 3rd, 1912. L. B. Moseley, Clerk.

47

Agreement of Counsel.

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Agreement to Amend Demurrer.

The demurrer by clerical error omitted the ground that the Act of 1912 is constitutional. It may be considered as thus amended.

A. H. WHITFIELD,
For Complainant;
ROSS A. COLLINS,
Attorney General;
For Def'ts in Demurrer.

48 *Order Denying Interlocutory Injunction.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958. In Equity.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

On the 6th day of December, 1912, came on to be heard the application by motion of complainant herein for an interlocutory injunction before Honorable Don A. Pardee and David D. Shelby, Circuit Judges of the United States for the Fifth Circuit, and W. I. Grubb, Judge of the District Court of the Northern District of Alabama, at the court room of the Circuit Court of Appeals for the fifth circuit at New Orleans, Louisiana, and it appearing that application was made to said Honorable Don A. Pardee, Circuit Judge as aforesaid, for the granting of said application and motion, and it further appearing that said Don A. Pardee called to his assistance to hear and determine said application by motion the two other Judges aforesaid, and it appearing that at least five days' notice of the hearing of said application has been duly given to the Governor and Attorney General of the State of Mississippi and to the defendants to said suit, and thereupon came the complainant by solicitors, and the defendants other than W. B. Gowdey and Jackson Oil & Refining Company, appeared by the Hon. Ross A. Collins, Attorney General of the State of Mississippi, and said defendants other than W. B. Gowdey and Jackson Oil & Refining Company having appear- in the suit by filing a demurrer to the original bill since this motion was
49 made, and the said three judges having heard said application and motion on the bill, exhibits, notices and demurrers, and being sufficiently advised in the premises, do now on this 13th day of December, a majority of the said Judges not concurring in granting said application, refuse and deny the same.

Witness our hands.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

Endorsed: Filed Dec. 14, 1912. L. B. Moseley, Clerk. E. M. B 7, p. 496.

50 *Amended Demurrer.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958. In Equity.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Now comes the defendants in this cause, except W. B. Gowdey and Jackson Oil & Refining Company, by their solicitors, and say that in the original demurrer filed herein to the bill of the complainant, by clerical mistake, the following ground of demurrer was omitted, and which is now added to said original demurrer by agreement of counsel, namely:

The said Bill is demurrable, and is hereby demurred to upon the ground that the labor Act of the Mississippi Legislature of 1912 is valid and constitutional.

Wherefore, the defendants pray that the Bill may be dismissed.

ROSS A. COLLINS,
Attorney General.
FRANK JOHNSTON,
Ass't Attorney General.

I certify that in my judgment this demurer is well taken and not interposed for delay.

FRANK JOHNSTON.

Endorsed: Filed Dec. 14, 1912. L. B. Moseley, Clerk.

51 *Petition for Appeal.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Petition for Appeal from Decree Denying Interlocutory Injunction.

To the Hon. Don A. Pardee, Circuit Judge; Hon. David D. Shelby, Circuit Judge, and Hon. W. I. Grubb, District Judge, of the United States, who heard and decided complainant's motion for an interlocutory or preliminary injunction herein:

Comes the above named G. W. Wathen, conceiving himself aggrieved by the interlocutory order made and entered in the above

entitled cause on the 13th day of December, A. D. 1912, by Hon. Don A. Pardee, Circuit Judge, Hon. David D. Shelby, Circuit Judge, and Hon. W. I. Grubb, District Judge, Judges of the Circuit and District Courts of the United States who heard and decided the application by motion of complainant for an interlocutory injunction herein, and wherein and whereby it was ordered and decreed that complainant's application by motion for a preliminary or interlocutory injunction herein be denied and overruled, hereby petitions said Judges for an order allowing complainant to prosecute an appeal from said interlocutory order denying said preliminary injunction to the Honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and, also, that an order be made fixing the amount of the security which complainant shall give and furnish upon said appeal, and upon the giving of such security said appeal be granted, and as in duty bound.

G. W. WATHEN,
By GREEN & GREEN.
HIRSH, DENT & LANDAU.
Of Solicitors for Complainant.

Endorsed: Filed December 17th, 1912. L. B. Moseley, Clerk.

52 *Assignment of Errors.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Comes the complainant, G. W. Wathen, and files the following assignment of errors upon which he will rely upon his appeal from the order and decree denying an interlocutory injunction herein made by the Hon. Don A. Pardee, Circuit Judge; Hon. David D. Shelby, Circuit Judge, and Hon. W. I. Grubb, District Judge.

The said court, by said Judges, erred in denying the interlocutory or preliminary injunction prayed in this case on the bill and exhibits and motion herein, and in not granting the application by motion for the preliminary or interlocutory injunction, because said statute of the State of Mississippi, Chapter 157 of the Laws of Mississippi of 1912, complained of, violates the provisions of the Fourteenth Amendment of the Constitution of the United States, in that, said statute denies to complainant,—

(1) Liberty of contract with its employés;

(2) Makes an unreasonable and arbitrary classification of manufacturers and repairers in the working of employés;

(3) Deprives complainant of his property without due process of law; and

(4) Imposes confiscatory and excessive fines.

Wherefore, said complainant prays that said decree be reversed and that the Honorable Judges of said Court may be directed to enter a decree sustaining the motion of complainant for such an interlocutory or preliminary injunction in accordance with the prayer of the bill.

MARCELLUS GREEN,
GARNER W. GREEN,
MARCELLUS GREEN, JR.,
JOSEPH H. HIRSH,
R. L. DENT,
M. D. LANDAU,
Solicitors for Complainant.

Endorsed: Filed December 17th, 1912. L. B. Moseley, Clerk.

53 *Order Granting Appeal.*

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

On motion of complainant and on filing the petition of complainant for an order allowing an appeal, together with an assignment of errors, it is ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the interlocutory order made December 13, 1912, denying the injunction, pendente lite, prayed by complainant herein, a majority of said Judges being of opinion that the said statute of Mississippi, Chapter 157 of the Laws of Mississippi of 1912 complained of, does not violate any of the provisions of the Federal Constitution; and that the amount of the bond on said appeal be and is hereby fixed in the sum of $500.00, that said bond be conditioned according to law, with surety or sureties to be approved by the clerk of said District Court; and that a certified copy of the record and proceedings herein be forthwith transmitted to said Supreme Court of the United States.

Ordered, adjudged and decreed this 16th day of December, 1912.

DON A. PARDEE, *Circuit Judge.*
DAVID D. SHELBY, *Circuit Judge.*
W. I. GRUBB, *District Judge.*

Endorsed: Filed December 17, 1912. L. B. Moseley, Clerk.

54 *Appeal Bond.*

UNITED STATES OF AMERICA,
Southern District of Mississippi,
Jackson Division:

In the District Court of the United States, Sitting at Jackson.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

Know all men by these presents, That we, G. W. Wathen, as principal, and Z. D. Davis and Amos R. Johnston of Jackson, Mississippi, as sureties, are held and firmly bound unto the Jackson Oil & Refining Company, and W. B. Gowdey, and Hon. Ross A. Collins, Attorney General of the State of Mississippi, Hon. Frank Johnston, Assistant Attorney General of the State of Mississippi, Hon. George H. Ethridge, Assistant Attorney General of the State of Mississippi, Hon. J. H. Howie, District Attorney of the Seventh Circuit Court District of the State of Mississippi, and Hon. O. B. Taylor, County Prosecuting Attorney of the County of Hinds, State of Mississippi in the penal sum of Five Hundred Dollars ($500.00) to be paid to said defendants, their administrators or assigns, for the payment of which well and truly to be made we bind ourselves, executors, administrators and successors, jointly, severally, by these presents.

Dated this the 16th day of December, A. D. 1912.

Whereas lately in the District Court of the United States for the Southern District of Mississippi, Jackson Division, in a suit pending in said court between G. W. Wathen, complainant, and the obligees herein as defendants, a decree was rendered against complainant, G. W. Wathen, whereby his application by motion for an interlocutory injunction was denied, and said G. W. Wathen having obtained an order allowing an appeal to the Supreme Court of the United States, and filed a copy thereof in the clerk's office of said court, to reverse the order and decree in the aforesaid suit, denying
55 his application for an interlocutory injunction and refusing the same, and a citation directed to obligees, defendants therein, citing them to be and appear at a session of the Supreme Court of the United States in the City of Washington, District of Columbia, on the 21st day of December, 1912.

Now the condition of this bond is such that if the said G. W. Wathen shall prosecute with effect said appeal and answer all damages and costs if he fails to make said plea good, then this obligation to be void, else to remain in full force and virtue.

G. W. WATHEN,
By GREEN & GREEN, *Attorneys.*
Z. D. DAVIS.
AMOS R. JOHNSTON.

Approved this 17th day of December A. D. 1912.
[L. S.] L. B. MOSELEY,
Clerk of the District Court of the United States for the Southern District of Mississippi, Jackson Division.

Endorsed: Filed December 17th, 1912. L. B. Moseley, Clerk.

56 *Citation.*

UNITED STATES OF AMERICA,
Supreme Court of the United States:

To Jackson Oil & Refining Company, W. B. Gowdey, Hon. Ross A. Collins, Attorney General of the State of Mississippi; Hon. Frank Johnston, Assistant Attorney General of the State of Mississippi; Hon. George H. Ethridge, Assistant Attorney General of the State of Mississippi; Hon. J. H. Howie, District Attorney of the 7th Circuit Court District of the State of Mississippi, and Hon. O. B. Taylor, County Prosecuting Attorney of the County of Hinds, State of Mississippi:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, District of Columbia, on the 21st day of December A. D. 1912, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Southern District of Mississippi, Jackson Division, wherein G. W. Wathen is appellant and you are appellees, to show cause, if any there be, why the decree rendered against said appellant as in said appeal and assignment of errors therewith filed, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this the 16th day of December in the year of our Lord, one thousand, nine hundred and twelve, and of the Independence of the United States of America, the one hundred and thirty-sixth.

DON A. PARDEE, *Circuit Judge;*
DAVID D. SHELBY, *Circuit Judge;*
W. I. GRUBB, *District Judge,*

being the Judges who heard and decided the application for the interlocutory injunction in said cause.

57 We hereby acknowledge service of the foregoing writ for all of the defendants therein except the Jackson Oil & Refining Company and W. B. Gowdey, this the 17th day of December, 1912.

ROSS A. COLLINS,
Attorney General of the State of Mississippi, for All of the Defendants Except W. B. Gowdey and the Jackson Oil & Refining Company.

I hereby acknowledge service of the within writ for the Jackson Oil & Refining Company and for myself this the 17th day of December, 1912.

W. B. GOWDEY, *Pro Se.*
JACKSON OIL & REFINING COMPANY,
By W. B. GOWDEY,
General Manager.

Endorsed: Filed December 17th, 1912. L. B. Moseley, Clerk.

58 *Stipulation as to Printing Record.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

In the District Court of the United States for the Southern District of Mississippi, Jackson Division.

No. 2958.

G. W. WATHEN
v.
JACKSON OIL & REFINING COMPANY et al.

It is agreed between the appellant and appellee- that the following and none other need be printed in the Supreme Court of the United States:

1. The caption of the minutes of this court.
2. Original Bill.
3. Exhibit "A" to the original bill.
4. Motion for interlocutory injunction.
5. Notice of hearing of interlocutory injunction, with service.
6. Demurrer to original bill with agreement amending same.
7. Amended Demurrer.
8. Decree or order denying interlocutory injunction.
9. Petition for appeal to Supreme Court of the United States.
10. Assignment of errors on appeal to Supreme Court of the United States.
11. Order granting appeal.
12. Appeal bond on appeal.
13. Citation on appeal.

G. W. WATHEN,
By GREEN & GREEN, *Solicitors.*
W. B. GOWDEY.
JACKSON OIL & REFINING CO.,
By W. B. GOWDEY,
General Maneger.
ROSS A. COLLINS,
Attorney General of the State of Mississippi, for All Defendants Except W. B. Gowdey and Jackson Oil & Refining Company.

Dated this 17th day of December, 1912.

Endorsed: Filed December 17th, 1912. L. B. Moseley, Clerk.

59 UNITED STATES OF AMERICA,
Southern District of Mississippi,
Jackson Division:

I, L. B. Moseley, Clerk of the District Court of the United States for the Southern District of Mississippi, Jackson Division, for the fifth circuit, sitting at Jackson, do hereby certify that the foregoing fifty-eight (58) pages, annexed to this certificate are full and correct copies of the originals in the case of G. W. Wathen v. Jackson Oil & Refining Company et al., as the same appear on file and are of record in my office, and that they constitute a true and perfect copy of the record in cause number 2958 on the equity docket in said court, and of the assignment of errors, and of all proceedings therein.

In witness whereof I have hereunto set my hand and the seal of this court the seventeenth day of December, in the year of our Lord, one thousand, nine hundred and twelve, and of the Independence of the United States the one hundred and thirty sixth.

[Seal U. S. District Court, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*

Endorsed on cover: File No. 23,466. S. Mississippi D. C. U. S. Term No. 891. G. W. Wathen, appellant, vs. Jackson Oil & Refining Company et al. Filed December 20th, 1912. File No. 23,466.

[redacted]

No. [redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

C. W. WEBBER

vs.

JACKSON OIL & REFINING COMPANY, ET AL.

MOTION TO ADVANCE.

MARCELLUS GREEN,

GARNER WYNN GREEN,

MARCELLUS GREEN, JR.,

[redacted]

For Movants.

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 891.

G. W. WATHEN

vs.

JACKSON OIL & REFINING COMPANY, ET AL.

MOTION TO ADVANCE.

Comes the appellant, by solicitors, and moves the Court to advance this cause for hearing at the earliest time compatible with the other business of the Court, and for grounds assigns:

This appeal is from an order of three Judges made under Section 266, Judicial Code, denying an application for an interlocutory injunction, upon the express finding by a majority of the Judges that the statute involved did not violate any of the provisions of the Federal Constitution; and allowing this appeal to this Court.

The bill, duly sworn to, was filed by appellant, a stockholder of Jackson Oil & Refining Company, a manufacturing corporation manufacturing cotton seed into its various products, against said corporation, W. B. Gowdey, its manager, and the Attorney General and the Assistant Attorneys General of the State of Mississippi, the District Attorney of the Seventh Judicial District of Mississippi, and the Prosecuting Attorney of Hinds County, State of Mississippi, wherein said mill operates, praying an interlocutory injunction against the enforcement of an Act of the Legislature

of the State of Mississippi, Chapter 157, Laws of Mississippi of 1912, as follows:

"*Chapter* 157. *H. B. No.* 628.—*AN ACT to prohibit persons, firms, or corporations engaged in manufacturing or repairing, from working their employes more than ten hours per day, except in cases of emergency or where public necessity requires, and fixing the penalty for such violation.*

"Employes Not to Be Worked Over Ten Hours in Certain Cases.

"SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That it shall be unlawful for any person, firm or corporation engaged in manufacturing or repairing to work their employes more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

"Penalty for Violation of this Act.

"SEC. 2. That any person, firm, or corporation violating this Act shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense.

"SEC. 3. That this Act shall take effect and be in force from and after July 12th, 1912.

"Approved March 16, 1912."

And averring that this statute was *a labor law*, pure and simple, and *not a health law*, and that it violated the Fourteenth Amendment of the Constitution of the United States, in that:

(1) It denied to a manufacturer or repairer, as such, liberty of contract with his or its employes; and (2) Its classification of manufacturers or repairers, without regard to health or hazard; and excluding persons and corporations whose employes perform services of identical character with those of manufacturers and repairers, is unreasonable, discriminatory and arbitrary, and a denial of the equal protection of the laws;

and, (3) It requires a force of three shifts of employes every twenty-four hours instead of two, and thereby the expense of operation is so largely increased as to make the investment in said mill unprofitable, and to such degree as that bankruptcy will result, and thereby it deprives complainant of his property without due process of law; and, (4) It imposes enormous and confiscatory fines and penalties.

The bill avers that employment in a cotton seed oil mill is a healthful occupation in a healthful place, and conducive to the health of and not injurious to its employes. It further avers that the executive officers of said Jackson Oil & Refining Company would willingly disobey said statute but they are coerced by threats of its enforcement, if disobeyed, by defendant law officers of the State, who have already begun prosecutions to enforce the enormous and confiscatory penalties against other manufacturers engaged in cotton seed manufacturing and threaten to proceed by prosecution if said Jackson Oil & Refining Company does not obey it.

Under Section 266 of the Judicial Code, complainant applied to Honorable Don A. Pardee, Circuit Judge, for an interlocutory injunction on the sole ground that said statute of Mississippi violated the specified provisions of the Federal Constitution, and upon proper notice, duly served, said application was heard before the Honorables Don A. Pardee, Circuit Judge, David D. Shelby, Circuit Judge, and W. I. Grubb, District Judge, and a majority of said Judges expressly held, as recited in the order denying said application, that said statute did not violate any of the provisions of the Federal Constitution.

That the Law Department of the State of Mississippi, and the Supreme Court of Mississippi in the opinion filed as Exhibit "A" to the bill (R——) interpreted said statute as valid, and prosecutions of manufacturers who disobey it, are being had for disobedience, and thereby, until an authoritative decision by this Court of the constitutionality of the statute is

made, serious and irreparable injury is inflicted upon all of the manufacturers in the State, who are forced to obey, and who have to employ and pay one-third more wages than they would pay if the statute is unconstitutional, and the Law Department of the State is prosecuting and will continue to prosecute those who disobey the statute, and thus irreparable injury is brought upon the welfare of the State of Mississippi in the administration of its criminal laws growing out of this statute, which is condemned as unconstitutional by the decision of this Court in *Lochner v. People*, 198 U. S., 46, re-affirmed in *Muller v. Oregon*, 208 U. S., 411.

That appeals to the Circuit Court of Appeals from decrees granting or denying interlocutory injunctions are made preference cases, and appeals to this Court, substituted for the Court of Appeals in this class of cases under said Section 266, Judicial Code, should be governed by the same rule.

Wherefore appellant prays that this motion be granted.

MARCELLUS GREEN,
GARNER WYNN GREEN,
MARCELLUS GREEN, JR.,
Solicitors for Appellant.

Entry of Appearance

We, Jackson Oil & Refining Company, and W. B. Gowdey, two of the appellees, hereby enter appearance herein in the Supreme Court of the United States and request that this motion to advance be granted.

JACKSON OIL & REFINING COMPANY.
BY W. B. GOWDEY, General Manager.
W. B. GOWDEY, *Pro Se.*

Jackson, Mississippi.
December 30, 1912.

Entry of Appearance, and Joinder in Request to Advance.

Office of the Attorney General of the State of Mississippi.

JACKSON, MISS., December 30, 1912.

We, Ross A. Collins, Attorney General of the State of Mississippi, and Frank Johnston, Assistant Attorney General of the State of Mississippi, and George H. Ethridge, Assistant Attorney General of the State of Mississippi, of appellees in the suit of *G. W. Wathen vs. Jackson Oil & Refining Company, et al.*, hereby enter the appearances in the Supreme Court of the United States of ourselves and of J. H. Howie, District Attorney of the Seventh Judicial District of Mississippi, and O. B. Taylor, County Prosecuting Attorney of Hinds County, State of Mississippi, part of appellees, in this cause, and to the motion of appellant to advance the same; and because the early hearing and decision of the questions involved are important for the interests of the State of Mississippi, we hereby join in the request for the advancement of the hearing of said cause.

ROSS A. COLLINS,
Attorney General of the State of Mississippi.

FRANK JOHNSTON,
Assistant Attorney General of the State of Mississippi.

GEORGE H. ETHRIDGE,
Assistant Attorney General of the State of Mississippi.

For themselves, and for J. H. Howie, District Attorney of Seventh Judicial District of Mississippi; and for O. B. Taylor, Prosecuting Attorney of Hinds County, State of Mississippi.

Office Supreme Court, U. S.
FILED
AUG 14 1914
JAMES D. MAHER,
CLERK

No. 979.

IN THE

SUPREME COURT OF THE UNITED STATES

G. W. WATTEN,
Appellant,
vs.
JACKSON OIL & REFINING COMPANY, ET AL.,
Appellees.

BRIEF FOR APPELLANT.

MARCELLUS GREEN,
GARNER WYNN GREEN,
of Jackson, Mississippi,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 891.

G. W. WATHEN,
APPELLANT,

versus

JACKSON OIL & REFINING COMPANY, ET AL.,
APPELLEES.

BRIEF OF GREEN & GREEN FOR APPELLANT.

Statement of Case.

The original bill, filed in the Jackson Division, Southern District, Mississippi, by G. W. Wathen, a stockholder of the Jackson Oil & Refining Company, a corporation, against said company, W. B. Gowdy, its manager, Ross A. Collins, Attorney General of Mississippi, Frank Johnston and George H. Ethridge, the Assistant Attorney Generals, J. H. Howie, District Attorney, and O. B. Taylor, County Prosecuting Attorney, averred that the Jackson Oil & Refining Company was engaged in manufacturing cotton seed into its various products by operating a mill therefor at Jackson, and prayed, among other things, an interlocutory injunction against the enforcement of chapter 157, Laws of Mississippi, 1912, providing:

"Employees Not to Be Worked Over Ten Hours in Certain Cases.

"SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That it shall be unlawful for any person, firm or corporation engaged in man-

ufacturing or repairing to work their employes more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments.

"Penalty for Violation of This Act.

"SEC. 2. That any person, firm, or corporation violating this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars for each offense, and each day's violation shall constitute a separate offense."

The bill averred that the statute was a **Labor Law,** and not a **Health Law,** and was in violation of the Fourteenth Amendment to the Constitution of the United States, in that,

(*a*). It denied such manufacturer or repairer, the Jackson Oil & Refining Company, liberty of contract in its employment of labor;

(*b*). By its arbitrary classification of manufacturers and repairers, without regard to health or hazard, excluding from its operation persons and corporations whose employes perform services of identical character.

(*c*). By making three shifts of employes every twenty-four hours instead of two, the expense of operation is so largely increased as to make the investment in said mill wholly unprofitable, necessarily resulting in bankruptcy, thereby depriving appellant of his property without due process of law, contrary to said Fourteenth Amendment.

The bill avers that employment in a cotton seed oil mill is a wholesome occupation, in a sanitary place, and conducive to the physical well being of and not injurious in any way to its employes. It further avers that the said Gowdy, and other executive officers of the Jackson Oil & Refining Company would willingly disobey said statute, but they are coerced by threats of its enforcement, if disobeyed, by defendant law

officers of the State, who have already begun prosecutions to enforce the confiscatory penalties against other manufacturers engaged in cotton seed manufacturing, and threaten to proceed, by prosecution, if said Jackson Oil & Refining Company does not obey it.

The Attorney General, with the other State Officials, demurred to the bill raising, substantially, three questions: (1) Whether or not said chapter 157, Laws 1912, is constitutional; (2) Whether appellant, as a stockholder, can maintain this suit; and (3) Whether or not under section 266 of The Judicial Code, as well as under general equity jurisdiction, the Court could grant the relief sought.

Under section 266 of The Judicial Code, appellant applied to Honorable Don A. Pardee, Circuit Judge, for an interlocutory injunction, on the sole ground that said statute violated the specified portions of the Federal Constitution, and upon due proceedings had, wherein Honorable David Shelby, Circuit Judge, and Honorable W. I. Grubb, District Judge, were called in, a majority of said Judges held that said statute did not violate the Federal Constitution, and denied the injunction.

The Law Department of the State of Mississippi, and its Supreme Court (*Buckeye Cotton Oil Company v. State*, 60 So. Rep., 775, printed as an appendix, interpret said statute to be valid, and prosecutions are being had for disobedience thereto; and thereby until an authoritative enunciation of this Court can be had on the constitutionality of the statute, serious and irreparable injury is being inflicted upon all of the manufacturers of cotton seed in said State, and, especially, upon the Jackson Oil & Refining Company, who are forced to obey said statute, and who, by reason thereof, are compelled to employ and pay out one-third more wages than they would pay, if said unconstitutional and void statute was not wrongfully enforced by the said officials.

Upon the interlocutory injunction being refused, appeal was taken to this Court.

POINTS.

I.

Chapter 157, Laws of Mississippi, 1912, is violative of the Federal Constitution, in that:

(*a*). It unconstitutionally restrains the liberty of contract. *Lochner v. New York*, 198 U. S. 45, 49 L. Ed., 937; *Adair v. United States*, 208 U. S., 161, 52 L. Ed., 436; *Muller v. Oregon*, 208 U. S., 412, 52 L. Ed., 551; *Chicago, etc., R. Co. v. McGuire*, 219 U. S., 565, 55 L. Ed., 338; *Allegeyer v. Louisiana*, 165 U. S., 578, 41 L. Ed., 832; *Smith v. Texas*, 233 U. S., 630; *Riley v. Massachusetts*, 232 U. S., 671; *Sturges vs. Beauchamp*, 231 U. S., 320; *Central Lumber Co. vs. State*, 226 U. S., 157; *Rosenthal vs. People, Id.*, 260; *Schmidinger v. Chicago, Id.*, 578; *Eubank v. Richmond, Id.*, 370; *Chicago, etc., Ry. Co. v. Hackett*, 228, U. S., 559.

(*b*). It arbitrarily discriminates against manufacturers and repairers, by consitutionally excluding from its operation, other persons and corporations whose employes perform services of identical character. *Lochner v. New York, supra*; *Soon Hing v. Crowley*, 113 U. S., 708, 28 L. Ed., 1145; *Gulf, etc., R. Co. v. Ellis*, 165 U. S., 155, 41 L. Ed., 666, and cognate cases.

(*c*) It creates and imposes confiscatory penalties. *Ex parte Young*, 209 U. S., 123.

II.

This Court has Jurisdiction at the suit of Appellant. *Ex parte Young*, 209 U. S., 123, 52 L. Ed., 714.

I.

(*b*). **Chapter 157, Laws 1912, is violative of the Federal Constitution in that it unconstitutionally restrains the liberty of contract.**

The statute provides:

"It shall be unlawful for any person, firm or corporation engaged in manuafcturing or repairing

to work their employes more than ten hours per day, except in cases of emergency, or where public necessity requires in such departments."

This Act has been the subject of three several opinions of the State Supreme Court: (1) *State v. J. J. Newman Lumber Company*, 102 Miss., 802; 59 So. 923; (2) same case upon re-argument, not officially reported, 60 So., 216; and (3) *Buckeye Cotton Oil Company v. State* 60 So., Rep., 776. (Not yet officially reported.)

The State Court, upon the first appeal in the *Newman Case*, held:

> "It is, therefore, incumbent upon the Legislature to enact all laws necessary for regulating the conduct of the people and the proper use of their property * * * *. It is the duty of the Legislature to consider the interests of all—what is best for society generally. As seen in the foregoing quotation from the State Constitution, it is enjoined upon the lawmakers that 'government is instituted solely for the good of the whole.' They are necessarily the judges of what is for the good of the citizens."

This undue elevation of State police power at the expense of private constitutional right is the fundamental error underlying all the said decisions. The State is without power to prohibit the making of a purely personal contract. Thus, in *Allegeyer v. Louisiana*, 165 U. S., 578, 41 L. Ed., 386:

> "It was said by Mr. Justice Bradley in *Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co.*, 111 U. S., 746, 762 (28, L. Ed., 585, 589), in the course of his concurring opinion in that case, that the 'right to follow any of the common occupations of life is an inalienable right.' It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence,

which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain inalienable rights; and among these are life, liberty, and the pursuit of happiness.' This right is again a large ingredient in the 'civil liberty of the citizen.' Again on page 764 (589), the learned Justice said: 'I hold that the liberty of pursuit— the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States.' And again, on page 765 (590): 'But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does deprive him, to a certain extent, of his liberty, for it takes from him the freedom of adopting and following the pursuit which he prefers; which, as already intimated, is a material part of the liberty of the citizen.' It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word, 'liberty,' as contained in the Fourteenth Amendment."

Furthermore, in *Chicago, etc., v. McGuire*, 219 U. S., 565, 55 L. Ed., 339, it is said:

"The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for government to effect, the legislature transcends the limits of its power in interfering with liberty of contract; but where there is reasonable relation to an object within the governmental authority, the exercise of the legislative discretion is not subject to judicial review. The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of *policy*. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is

the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance.

"The principle was thus stated in *McLean v. Arkansas, supra*, pp. 547, 548: 'The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that the judges may hold views inconsistent with the propriety of the legislature in questions, affords no ground for judicial interference unless the Act in question is unmistakably and palpably in excess of legislative power (cases cited). * * * If there existed a condition of affairs concerning which the legislature of the State, exercising its conceded right to enact laws for the protection of the health, safety, or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right to contract or carry on business, and having no just relation to the protection of the public within the scope of legislative power, the Act must fail."

The error in the State Court's opinion is further emphasized, thus:

> "At the same time, it must be borne in mind that the rights of an individual must at all times be subordinate to the welfare and best interests of society."

In the light of the opinions of this Court, this is but a half truth; true, when the Act of the legislature is within its police power, but equally untrue, when the attempted legislation lies within the pale of individual liberty of contract—where the agreement is purely personal and private and in no way affecting the public. The Mississippi Court declares:

> "The legislature, in enacting this law, decided that it was a regulation needed among the class of citizens mentioned, that it was for their best welfare, and that the interests of the public required the law."

If this power, as has been said times without number, was conceded to the legislature, the provisions of the Constitution would at once cease to be effective; for never is a law enacted as to which the same identical process is not to be found—in each case, the lawmakers declare it to be the law, and necessary to the public welfare, but that does not answer the question as to whether or not the power to legislate exists with reference to the purchase or sale of labor in or about manufacturing plants, where such labor does not require a character of work that is to be performed by women or children, or under unsanitary conditions, *i. e.*, in smelters, underground workings, or in similar unnatural conditions. The Mississippi Court in its citations from this Court, does not notice the majority opinion in the *Lochner Case*, nor the cases subsequent thereto, but dwells at length upon:

(1). *Gundling v. Chicago*, 177 U. S., 183, 44 L. Ed., 725—but the holding therein is so manifestly proper that it need not be distinguished; it is simply inapplicable.

(2). *Holden v. Hardy*, 169 U. S., 366, 42 L. Ed., 780—which properly holds, as quoted by the Mississippi Court:

> "The protection of the health and morals, as well as the lives, of citizens, is within the police power of the State Legislature."

The act in that case was confined exclusively to persons compelled to labor, (1) in underground mines; and, (2), amid the fumes, metallic dust and poisonous inhalations of smelters and other manufactories for the reduction and refining of ores. These occupations were known of all men to be noxious; and their regulation did not in the least trench upon the field attempted herein to be invaded. If anyone should have worked

longer than the time mentioned in that act, the State would suffer by having the health of its citizens undermined. The opinion closes with the observation:

> "We have no disposition to criticize the many authorities which hold that the state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon that subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of its employes, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in the exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class. The distinction between these two different classes of enactments cannot be better stated than by a comparison of the views of this Court found in the opinion in *Barbier v. Connelly*, 113 U. S., 27 (28; 923) and *Soon Hing v. Crowley*, 113 U. S., 703 (28:1145), with those later expressed in *Yick Wo v. Hopkins*, 118 U. S., 356 (30:220)."

Surely this opinion, expressly refraining from criticising the decisions upon which we rely, and, declaring that an expression with reference thereto was unnecessary, cannot be tortured into an authority whereby the later decisions of this Court can be impugned.

(3). The Mississippi Court then stated that counsel contend that *Lochner v. New York, supra*, was controlling in the case at bar; and so, we submit, it is. An elaborate citation is taken from the dissenting opinion, but that case, even the dissenting opinion therein would have condemned the ill advised paternalism of chapter 157, in controversy.

The majority opinion in the *Lochner Case* contains the declaration that:

> "It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to, and no such substantial effect upon, the health of the employe, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employes (all being men, *sui juris*), in a private business, not dangerous in any degree to morals, or in any real and substantial degree to health of the employes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution."

Now turning to *Buckeye Cotton Oil Company v. State*, 60 So., 776, *infra*:

> "The prosecution was begun by an affidavit lodged with a justice of the peace which contained five counts, each count alleging the working by appellant of a separate employe for more than ten hours on the day named. The name of the employe in the first count was Floyd Ford; in the second, Will Smith; in the third, Sol Brown; in the fourth, Warren Graham; and in the fifth, A. M. Henry. The case was submitted to the judge at circuit for decision by him, without a jury, upon an agreed statement of facts, in which it was agreed: That appellant was a corporation operating a cotton seed oil mill, setting out the manner in which the cotton seed were by it separated into their component parts, to-wit, hullers, linters, cake, and crude cotton seed oil, and prepared for use. That on the day named in the affidavit it worked the employes named in the affidavit, all of whom were adults, for more

than eleven hours. That Floyd Ford was a meal cook, whose duties consisted of supervising the employes in cooking the meal, seeing that it was properly cooked, that all machines were kept in running order, and, in the event of a breakdown, report the same to the superintendent. That Will Smith was a 'panman,' or pan shoveller, whose duties as such were to take the cooked meal after it was formed from the former and load it in the press. It would take the said Will Smith about fourteen minutes to load the presses. There was then an intermission of ten minutes before the next loading began, and at the end of one hour he was off one hour, at the end of this time he took up the same duties again, actually working every other hour, with an intermission of ten minutes between each charge or loading. That while this employe was on duty more than ten hours, in fact, about eleven hours, he was engaged in actual manual labor not exceeding six hours. That Sol Brown was a seed feeder, whose duty as such was, 'to feed the cotton seed from bins into the tunnel conveyer,' 'by which they are carried by means of a screw, automatically into a sand and boll screen room.' That A. M. Henry was the superintendent of the plant, charged with 'the general supervision of the opeartions of the said mill.' That this mill is in operation for only about five months in each year, none of the employes except Henry being empolyed therein except during the months the mill is in operation—Henry being employed for the year. That 'the work in which these employes were engaged in no manner impairs their health, physical condition, or moral nature, or that of the public,' but, on the contrary, the extraction of oil from cotton seed 'is a very healthful occupation, tends to build up the vitality of the system, and this is especially true where any laborer had any tendency to tuberculosis. That employment at a mill of this kind benefits them.' That in discharging their duties these employes were not subjected to 'noxious, injurious, or damaging odors, gases, dusts, noises,'

etc., and that there is connected with their employment 'no unusual heat, and no complicated or dangerous machinery,' but, on the contrary, the rooms in which they worked were thoroughly ventilated and in a comfortable and cleanly condition." * * * *

"In order for the appellant to be guilty, it must not only be engaged in manufacturing, but the employes alleged to have been worked by it over-time must be of the class protected by the statute. In the *Newman Lumber Company Case* we held that all possible employes of a manufacturing establishment are not within the protection of the statute; but it necessarily follows from the construction there put upon the statute that all employes who compose the organized force and work with machinery, whose work supplements that of machinery, and must be performed while it is, and in order that it may be kept in operation, are within its protection. The legislature clearly intended to protect the employe who is confined to the precincts of the manufacturing establishment, and who is practically held in bondage by the machine with, or in connection with, which his work is performed, making it compulsory upon him to answer all of its motions with corresponding action. Appellant's employes, Ford, Brown, and Green, are, therefore, within the protection of the statute, and appellant violated it in working them for more than ten hours in one day."

Now, with this direct adjudication upon the very business conducted by the Jackson Oil & Refining Company, we have declared:

"That the mill was operated only about five months in each year, during which time it was kept in perfect sanitary condition, and that work therein 'tends to build up the vitality of the system,' is immaterial. The statute protects all employes in a designated class without reference to the sanitary or unsanitary condition of the establishment in which their work is performed. The injurious consequences from which they are protected are such as

result from overwork of a certain character, and not as result from unsanitary surroundings. That it appears from the agreed statement of facts 'that the work in which these employes were engaged in no manner impairs their health, physical condition, or moral nature, or that of the public,' is also immaterial, for the experience of mankind has demonstrated that the contrary is the fact, when it is performed daily for many consecutive hours. Moreover, the statute operates on all employees of a designated class, without reference to whether in a particular case the over-work will, or will not, result in detriment to the physical and mental welfare of the workman."

So there is not in the business of a cotton oil mill that which brought the law of New York into favor with the minority opinion of this Court in *Lochner v. New York, supra.* This statute is a labor law which embraces no vestige of a health measure. The opinion in chief in the *Lochner Case* in the Court of Appeals of New York, 177 N. Y., 162, by Judge Parker, declared.

> "To that end the legislation undertakes to provide by the statute, which bears on its face evidence of an intelligent draftsman acquainted with the dangers of unsanitary conditions in such establishments, for proper drainage and plumbing of the buildings and rooms occupied for such purposes."

All of Judge Vann's concurring opinion, pages 168 to 178, is based exclusively upon the proposition that it conserves the health, and in the dissenting opinion of Judge O'Brien, page 181, he declares:

> "That is one ground upon which the statute is defended by the learned district attorney. He contends it is a health law, passed for the purpose of protecting the public health, or at least the health of those persons employed in bakeries."

Judge Bartlett, in his dissenting opinion, pages 188, to 189, declared:

> "The country miller of fifty years ago, who passed a long and happy life amid the humming machinery of the grinding press of the upper and nether stones, little dreamed of a coming day when the legislature in the full panoply of paternalism would rescue his successor from the appalling danger of the life he led until old age summoned him to retire! It is because I believed that the occupation of a baker does not fall within these general principles I vote for reversal."

So, in this Court, after extensive quotations from Professor Hirt, in his treatise on the diseases of the workers, and other authorities, the minority upheld the New York statute because they said it was plainly a health law while the majority overthrew it because it was not a health law.

Now comes the State of Mississippi and declares that so far as health is concerned, under the statute now at bar, that it is immaterial. So, we submit that the present statute would have been declared unconstitutional both by the majority and minority opinions, in the *Lochner Case*, because the statute here does nothing more than abrogate the right of private contract, regardless of the healthfulness or unhealthfulness of the employment.

In a large measure, the work of the meal cook and the panman is similar to that done in a bakery, except that there is no dust; the hours are shorter; the employment is never more than six months out of the entire year, and contact with the oil builds up instead of depleting the system.

In *Ex Parte Fred Martin*, 26 L. R. A. (N. S.), 246, it is said:

> "The limitations of the doctrine are well illustrated by the subsequent decision in *Lochner v. New York*, 198 U. S., 45, in which the Court declared

invalid a law limiting the hours of labor of bakers. The real ground of that decision is, we think, to be found in the following extract from the opinion of Mr. Justice Peckham: 'We think that there can be no fair doubt that the trade of a baker, in and of itself, is *not an unhealthy one* to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employe.' The decision in the *Lochner Case* was by a bare majority of the Court, but the majority itself recognized *the correctness of the decision* in *Holden v. Hardy*, and distinguished that case upon the ground that the callings involved in the two statutes were essentially different."

"It follows from a comparison of these two decisions that in determining whether an act, limiting the hours of labor in any occupation, is in violation of the provisions of the Federal Constitution, the primary consideration is whether or not the occupation possesses such *characteristics of danger to the health of those engaged in it* as to justify the legislature in concluding that the welfare of the community demands a restriction."

In *People of New York v. Williams*, 12 L. R. A. (N. S.), 1130, it is said:

"Judge Peckham, who wrote the prevailing opinion prefaced his discussion of the question whether the statute could be held as an exercise of the police power in the interests of public health as a *pure labor law* irrespective of the question of health as it involved neither the safety, the morals nor the welfare of the public; and that the law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. The decision was upon the ground that the occupation of bakers was not intrinsically so unhealthful as to make the legislation in question a legitimate exercise of the police power in the interest of public health."

In other words, if in the *Lochner Case* the majority had considered the New York statute a health measure, they would have gone with the dissenting judges, and if the dissenting judges had considered the statute a mere labor law, they would not have dissented. But both majority and minority in the *Lochner Case* would have denounced chapter 157 because it in no wise related to health but regulated solely the right of private contract.

At the last hearing of the *Newman Case, supra*, which was on a suggestion of error, it is attempted to limit the operation of chapter 157, to some extent, and the Supreme Court of Mississippi declared, finally, whether this or that person, or corporation, engaged in manufacturing, comes within the purview of the statute or whether a particular laborer engaged to work, is required to work in manufacturing within the meaning of the law, *are questions of fact.* But, as shown by the subsequent decision in the *Buckeye Cotton Oil Company Case, supra*, the Court has receded from this position so far as manufacturers of cotton seed oil are concerned by expressly holding that they fall within the prohibited class.

As held in *Adair v. United States*, 208 U. S., 172, 52 L. Ed., 442, touching the *Lochner Case, supra*:

> "Although there was a difference of opinion in that case among the members of the Court as to certain propositions, there was no disagreement as to the general proposition that there is a liberty of contract which cannot be unreasonably interfered with by legislation. The minority were of opinion that the business referred to in the New York statute was such as to require regulation, and that, as the statute was not shown plainly and palpably to have imposed an unreasonable restraint upon freedom of contract, it should be regarded by the courts as a valid exercise of the state's power to care for the health and safety of its people."

But in the case at bar, manufacturing cotton seed does not occupy that category; for, as shown by the

Buckeye Cotton Oil Company Case, the duties of one laborer, who was held to be within the act, consisted solely of shoveling cotton seed into a screw conveyor, his duty of shoveling not being essentially different from that occupation when pursued by a digger of ditches or other common laborer, but merely because such shoveling was to be done into a conveyor, the statute condemned it and the state court upheld the condemnation.

In *Muller v. Oregon*, 208 U. S., 416, 52 L. Ed., 554, the Court said:

> "We held in *Lochner v. New York*, 198 U. S., 45, 49 L. Ed., 937, 25 Supreme Court Rep., 539, that a law providing that no laborer shall be required or permitted to work in bakeries more than sixty hours in a week or ten hours in a day was not, as to men, a legitimate exercise of the police power of the state, but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with, and void under, the Federal Constitution. That decision is invoked by plaintiff in error as decisive of the question before us. But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor."

The legislation in that case was properly upheld because the Court noted the fundamental difference existing in matters of this sort between men and women, and *Ritchie v. People*, 155 Ill., 98, the only case we find to the contrary, has been substantially overruled by the later case of *Ritchie v. Wayman*, 244 Ill., 530, so that, upon the point, the decisions are unanimous.

This is equally true where the duty to be performed is deleterious, but the mere fact that one has to labor causes, necessarily, exhaustion, but such exhaustion does not, under ordinary conditions, bring the laborer

within the police power. See also, *Welch v. Swasey*, 214 U. S., 91, 53 L. Ed., 929; *Laurel Hill Cemetery v. San Francisco*, 216 U. S., 365, 54 L. Ed., 519; *Atlantic Coast Line Railroad v. Riverside Mills*, 219 U. S., 201, 55 L. Ed., 180; *Chicago, Burlington & Quincy Railroad Company v. McGuire*, 219 U. S., 566, 55 L. Ed., 338.

The cases of *Central Lumber Company vs. State*, 226 U. S., 157; *Rosenthal vs. People, Id.*, 260; *Schmidinger vs. City of Chicago, Id.*, 578; *Eubanks vs. City of Richmond, Id.*, 137, support our proposition. That the occupation must be hazardous or involve some element of public police protection was again declared in *Chicago, etc., Railroad Company vs. Hackett*, 228 U. S., 559 (hazardous occupation), and in *Sturges v. Beauchamp*, 231 U. S., 320 (child labor and hazardous occupation), and in *Riley v. Massachusetts*, 232 U. S., 671 (woman labor). *Smith v. Texas* 233 U. S., 630, touching the liberty of contract, holds:

> "1. Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling.
>
> "If the service is public, the State may prescribe qualifications and require an examination to test the fitness of any person to engage in the public calling (citing cases). The private employer may likewise fix standards and tests; but, if his business is one in which the public health or safety is concerned, the State may legislate so as to exclude from work in such private calling those whose incom-

petence might cause injury to the public. *But, as the public interest is the basis of such legislation, the tests and prohibition should be enacted with reference to that object, and so as not unduly to 'interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations.' Lawton v. Steele*, 152 U. S., 137. (Italics are ours.)"

This Court has made the doctrine perfectly plain, and these cases, quite independently of the unanimous rule in favor of appellant in the several State Courts, require the declaration that this act attempts to legislate upon a subject over which the State is without power. For decisions upholding this contention in the State Courts, see *Milsicek v. State*, 225 Mo. (1910-) 561; *People v. Williams*, 189 N. Y. (1907) 131; S. C. 116 App. Div., 397; *In re Ten Hour Law*, 24 R. I., 603; *Eight Hour Bill*, 21 Colo., 29; *Low v. Reese Printing Co.*, 41 Neb., 454; *Wheeling Bridge, etc., Co. v. Gilmore*, 8 Ohio, C. C., 658.

II.

(*b.*) **Chapter 157, by arbitrarily classifying manufacturers and repairers, without regard to health or hazard, excluding from its operation persons and corporations whose employes perform services of identical character, violates the Federal Constitution.**

Turning to the duties shown in *Buckeye Cotton Oil Company v. State, supra*, it appears that one whose duties require him to shovel seed is held to be within the terms of the Act, whereas, one who shovels otherwise is not. The one thing which raises a difference is, that the shoveling in one instance is done into a conveyor or in a manufacturing plant, while in all other instances it is not. Does the place at which the shoveling is done, when such place is no more dangerous than is here apparent, constitute the basis for a legal and constitutional classification?

As stated in *Hing v. Crowley*, 113 U. S., 709, 28 L. Ed., 1147, those discriminations which are open to

objections are those where persons engaged in the same business are subjected to different restrictions, or, rather, held entitled to different privileges under the same conditions.

In *Gulf, etc., R. R. Co. v. Ellis*, 165 U. S., 159, 41 L. Ed., 669, Mr. Justice Brewer said:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

And then, after a complete review of the authorities, concludes at page 672:

> "It is apparent that the mere classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment; and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

See *Magoun v. Illinois Trust, etc. Bank*, 170 U. S., 283., 42 L. Ed., 1037.

Discrimination cannot be made under the guise of classification, and a manufacturer of cotton seed products who employs a meal cook, does not impose upon such person any different or other duties than those performed in the *Lochner Case* by the bakers and candy makers. So far as it affects the other employes about the building, their duties could be discharged just as effectually if the machinery were not present, and the only thing that it does is to eliminate employes who would otherwise have to perform the identical function by hand.

The firemen in the *Buckeye Cotton Oil Company Case* was one Warren Green, and the State Court held that he was protected; while the man who fires a

furnace in an office building, or in an electric light plant, or any other one anywhere else, excepting only where manufacturing or repairing was done, performing the same functions, would not be within the purview of the statute. So we submit that where, as here, the cook, the fireman, and the shoveler of the seed would not be in other occupations prohibited from contracting to do more than ten hours work per day, that in the instant case they cannot be singled out and prohibited from doing that which those who earn their livelihood in different capacities could do if they so desired.

III.

(*c*). **Chapter 157 violates the Federal Constitution, in that, in the fines imposed and obedience thereby obtained, it is confiscatory.**

In *Ex Parte Young*, 209 U. S., 123, 52 L. Ed., 714, the rule is there stated which is here applicable, and thereunder we respectfully submit that the property of appellant is being taken daily when, if the law sought to be enjoined were found to be constitutional, the amount of the penalties and forfeitures that would be imposed upon this corporation would be intolerable.

Let it be noted that the Jackson Oil & Refining Company is not a large corporation, but comparatively a small one, and that the fine could run as much as $50.00 per day, and then, by reason of the fact that the Supreme Court of the State of Mississippi is over a year behind, the question could not be determined in this Court sooner than a year and a half to two years, with the result that during all of this period there would necessarily have been an operation at the expense of appellant, who was forced either to let the law be violated by the corporation, or to refrain from the violation of the law, and suffer thereby the business losses that would accrue. It is the boast of equity jurisdiction that where the common law, by reason of its universality, is deficient, a remedy will be supplied. Such remedy is necessarily given in a case of this sort

where the officials of the State have uniformly and unanimously resolved upon the enforcement, personally, of an unconstitutional act, and not only resolved upon such enforcement, but put that enforcement into effect.

Pending a final adjudication upon this writ there would be a dilemma presented wherein, if appellant obeyed the alleged law, the corporation would be substantially ruined by having paid out voluntarily its money in operating expenses, and would be without a remedy; or if it chose to violate the alleged law, there would come into play prosecution after prosecution by these parties under the decision of the State Supreme Court; which refused to follow the decisions of this Court, so that *pendente lite* the life of a stockholder would be far from easy.

Now, under the settled jurisprudence as administered in *Ex Parte Young, supra*, the equity court can, at the instance of a stockholder who is thus beset, grant relief by cutting the Gordian knot through a decision as to the constitutionality of the statute, and this process is expedited by section 266 of the Judicial Code; so that, almost immediately a hearing can be had in this Court, which will forever determine whether or not the statute in question invades private right or is a just and valid exercise of the police power. This Court has, as reiterated time and again, wisely refused to attempt to define the boundary of police power, but in each instance has decided only the concrete case and allowed these decisions to become monuments on the line that will ultimately define where police power ends and constitutional privilege begins. Until such definition, the matters are of doubt, and, in order to escape the multitudinous prosecutions, with the vexatious litigation attending, and the enormous costs that will be incurred, it is just and proper to resort to this Court, and that relief will be granted under *Ex Parte Young, supra*.

IV.

This Court has Jurisdiction at the suit of Appellant.

The point at issue was fully covered by the opinion of this Court in *Ex Parte Young*, 209 U. S., 163, 52 L. Ed., 730. Appellant, as a stockholder, was not compelled to sit idly by and allow an unconstitutional statute to be used by the constituted authorities as a means whereunder the business in which he was interested as a stockholder was to be ruined. The ancient fiction of a separate personal entity for a corporation has long since passed into disuse, and its only function is to obscure the true legal relations. As said in *Taylor on Private Corporations*, 4th Ed., 8:

> "And, if so, what has become of the venerable 'legal person?' Is he still somewhere, as he has always been imagined? Or is he nowhere, as he has always actually been? Shall we regard him as being not only the sum of the legal relations in respect to the corporate enterprise, but, also, as being at the same time the body corporate consisting of shareholders? Shall we say he is the combination, the mystic unification of our two conceptions? Better not; better forget him. For he is a conception which, if it amounts to anything, is but a stumbling block in the advance of corporation law towards the discrimination of the real rights of actual men and women. And then, after all, what has he ever been but an abstraction materialized in a name?"

The violation of the law one time would not be sufficient to call into action the State authorities, if after that one violation there should be a cessation of such violation with no purpose to commit such a violation again. There would have to be a persistent and continued violation of the law before the State authorities would bring into action the statute, and thus allow the matter to be tested. During all of this period, the plant of the Jackson Oil & Refining Company would have to be operated, and such operation would

be subject to the terms of this unconstitutional Act which would, throughout the transaction be operating to destroy the property values of appellant. The judicial powers could not be brought into action, except in this wise, without incurring serious consequences, and the stockholder who is in substance the owner of the property as such, certainly has the rights so amply and incontrovertibly established by the decision in *Ex Parte Young, supra.* The brief herein filed by the learned Attorney General does not squarely meet this issue, and in his Point One does not make reference, direct or indirect, to this controlling decision. However, at the conclusion he does take up the case, and makes an attempted distinction upon nine points. About the best that can be said of these attempted distinctions is that the Minnesota statute was more vicious than the Mississippi statute, but the principle underlying does not in any way vary. If there was a right in the stockholder in the Minnesota case to attack the more vicious statute there, there is right in the stockholder in Mississippi to attack the less vicious statute here. The question narrows itself down not to one of right but to one of degree. The invasion of right is conceded, but it is attempted to be justified upon the ground that it is not as serious an invasion as occurred in the *Young Case.* A perusal of the bill will demonstrate that so far as the stockholders are concerned, the cases are identical.

Under the Attorney General's Point Two, section 266 of The Judical Code is absolutely conclusive, and needs no further interpretation, and, as to there being no jurisdiction in equity as a general rule to enjoin criminal proceedings, we admit that such is the ordinary principle, but the exception is accurately put in the *Young Case*, page 162, L. Ed., 730, the Court quoting to approve *Dobbins v. Los Angelse*, 105 U. S., 24, 49 L. Ed., 177:

> "It is well settled that where property rights will be destroyed, unlawful interference by criminal

proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. *Smyth v. Ames*, 169 U. S., 42 L. Ed., 819."

The principle underlying these cases is perfectly well settled, and the learned Attorney General on behalf of the State has not cited nor distinguished the decisions upon this point.

Respectfully submitted,

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